No. 17-236

IN THE
Supreme Court of the United States

SARAH MARIE JOHNSON, PETITIONER,

v.

STATE OF IDAHO, RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI
TO
THE IDAHO SUPREME COURT

SUPPLEMENTAL BRIEF

Submitted by:

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SUPPLEMENTAL BRIEF

In the two months since Ms. Johnson petitioned for certiorari, another state has been added to the growing ranks of those jurisdictions prohibiting life without parole sentences for juvenile offenses. On October 11, 2017, California eliminated the penalty of life without parole for juveniles. Like Delaware, California retains the punishment in name (albeit for an exceedingly narrow set of offenses)[1], but nonetheless provides for parole eligibility for *all* juveniles subject to that sentence. SB 394, 2017-2017 Sess. (Cal.) available at https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB394

"[T]he consistency and direction of change" in state policy for a particular sentence or category of offenders is an important indicator for assessing whether there is a constitutionally significant consensus against a particular punishment. Pet. 8; *Atkins v. Virginia*, 536 U.S. 304, 315 (2002). Here, the change is clear: States are rapidly abandoning the policy. In the sixteen years between the Court's permitting execution of persons under the age of eighteen at the time of the offense and the Court's proscription of that punishment, five states abandoned the policy. *Roper v. Simmons*, 543 U.S. 551, 565 (2005) overruling *Stanford v. Kentucky*, 492 U.S. 361 (1989). Likewise, in the thirteen years between this Court's holding permitting execution

[1] In California life without parole is available in name only for murders that were the product of torture or where the victim is a law enforcement officer. Cal. Penal Code § 1170 (2015).

of the intellectually disabled and the decision disavowing the same, seventeen states abandoned the practice. *Atkins*, 536 U.S. at 314-15 overruling *Penry v. Lynaugh*, 492 U.S. 302 (1989). In both instances, the Court held that the rate, direction, and consistency of the change supported its conclusion that there was a consensus against the punishment.

The change relevant to Ms. Johnson's case – state policy on juvenile life without parole – has been even more dramatic. With California, in the five years since *Miller v. Alabama*, 567 U.S. 460 (2012), seventeen states have abandoned the practice. Pet. 8-9. No state has reintroduced the punishment and those that retain it have limited its reach. Pet. 10.

This Court should intervene to finally bring the practice to an end nationwide, holding that juvenile life without parole sentences are contrary to the evolving standards of decency.

CONCLUSION

Ms. Johnson respectfully requests that the Court grant her Petition.

Respectfully submitted,

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